

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ACANTHA LLC,

Plaintiff,

Case No. 19-cv-10656
Hon. Matthew F. Leitman

v.

NUVASIVE, INC.,

Defendant.

ORDER GRANTING PLAINTIFF LEAVE TO AMEND ITS COMPLAINT

On March 5, 2019, Plaintiff Acantha LLC filed this patent-infringement action against Defendant NuVasive, Inc. (*See* Compl., ECF #1.) NuVasive has now moved to dismiss the First Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (*See* Mot., ECF #12.) NuVasive argues, among other things, that the Complaint does not plead sufficiently detailed or specific factual allegations and is, therefore, defective for failing to state a plausible claim under the Supreme Court's decisions in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). (*See id.* at Pg. ID 84-87.)

Without expressing any view regarding the merits of the motion to dismiss, the Court will grant Acantha the opportunity to file a First Amended Complaint in order to remedy the purported pleading defects in the Complaint. The Court does not anticipate allowing Acantha another opportunity to amend to add factual

allegations that it could now include in its First Amended Complaint. Simply put, this is Acantha's opportunity to allege any and all additional facts, currently known to it, that may cure the alleged pleading deficiencies in the Complaint.

By **May 22, 2019**, Acantha shall notify the Court and NuVasive in writing whether it will amend the Complaint or respond to the motion to dismiss. If Acantha provides notice that it will be filing a First Amended Complaint, it shall file that amended pleading by no later than **June 7, 2019**, and NuVasive shall answer or otherwise respond to it by no later than **July 8, 2019**. Upon the filing of a First Amended Complaint, the Court will terminate without prejudice NuVasive's currently-pending motion to dismiss as moot. If Acantha provides notice that it will not be filing a First Amended Complaint, it shall file its response to NuVasive's motion to dismiss in accordance with the Court's Local Rules.

IT IS SO ORDERED.

s/Matthew F. Leitman

MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: May 8, 2019

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on May 8, 2019, by electronic means and/or ordinary mail.

s/Holly A. Monda

Case Manager
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